

LEGAL
ENVIRONMENT
OF
BUSINESS



HENRY N. BUTLER



LEGAL ENVIRONMENT OF BUSINESS

Government Regulation
and
Public Policy
Analysis

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P R E F A C E

This text is designed to fill the need for quality teaching materials for the course on the legal environment of business. The legal environment course is still in its infancy, and most of the texts remain wedded to teaching it in the same fashion as the traditional business law course—which tends to emphasize legal rules and their exceptions. Most of the analysis, therefore, tends to concentrate on the law—rather than on the implications of the law for business behavior and economic performance. This text adds a broader dimension—the presentation of the legal rules is supplemented (but *not* replaced) by analysis of the public policy underlying the law. The need for the policy analysis approach, as opposed to the more traditional legal analysis approach, is easily demonstrated.

The law is constantly in a state of transition. Legal rules affecting the behavior of businesses are no exception. This is especially evident for regulatory laws where differing enforcement philosophies and statutory interpretations emerge with changes in presidential administrations. This evolutionary process means that knowledge of specific aspects of many areas of the law quickly becomes obsolete. Such an observation leads one to question the need for learning detailed rules of law as part of an undergraduate business course or graduate studies. Instead, developing a broad understanding of why the rules exist and of their impact on business behavior may be longer lasting—and, thus, more valuable. The lessons from a policy anal-

ysis perspective will outlive many legal rules.

This textbook continues the tradition of legal environment texts by presenting relatively detailed accounts and analyses of legal rules. The major innovation in the textbook, however, is to present the materials in an analytical framework designed to give students a broader understanding of the role of the law in various contexts so that they will be better equipped to understand and even predict future developments in the law as it pertains to business. Another significant attribute of this text is that it contains all of the materials traditionally presented in the legal environment course, and then—where appropriate—takes the additional step of presenting a consistent policy analysis of legal rules and public policies toward business.

COURSES AND ACCREDITATION

The course for which this text was written is offered under a number of titles at different universities and colleges at the graduate and undergraduate levels, including “The Legal Environment of Business,” “Business and Public Policy,” “Business and Government,” “Business and Society,” “Business and the Legal System,” and numerous permutations of the preceding. Regardless of the course title, every effort has been made to be responsive to the accreditation standards of the American Assembly of Collegiate School of Business (AACSB). Those AACSB standards define

the common body of knowledge for business students as including:

... a background of the economic and legal environment as it pertains to profit and/or non-profit organizations, along with ethical considerations and social and political influences as they affect such organizations.

In fact, and not surprisingly, I think that the policy analysis perspective of this book comes closer to fulfilling those requirements than any other legal environment of business text. Policy analysis is essentially economics, so this text's combination of law with policy analysis naturally results in the AACSB's "background of the economic and legal environment."

ORGANIZATION

A quick look at the table of contents will reveal the differences that result from approaching the legal environment from a policy analysis perspective. Chapter 1 provides introductions to the law and the policy analysis approach to the legal environment of business. The introduction to the law is traditional. The policy analysis approach, on the other hand, is a substantial departure from the traditional approach of legal environment texts. The policy analysis stresses the important distinction between normative and positive analysis. "Normative" refers to subjective, value-based propositions. It describes the world as one thinks it "ought" to be. "Positive" refers to descriptive, value-free propositions that can be tested for accuracy. It describes the world as it is. A major problem with many of the traditional legal environment texts is that they have taken a normative approach to policy issues—policies are often discussed by stating that one form of regulation is "better" (or "worse") than another. The positive approach, in contrast, begins with a value-free description

of the impact of the regulation. In many instances, regulations injure some parties and help other parties. The positive approach identifies the relevant costs and benefits. Whether or not the policy analyst chooses to let those costs and benefits be the only guide in evaluating policies is itself necessarily a normative matter—and, by definition, no one person is better than another at making such calculations. Nevertheless, a positive analysis is a sound starting point because it helps to separate the real from the ideal.

Chapter 1 also introduces a basic approach to policy analysis that is applied throughout the text. For any particular law or regulation, the first step of analysis is to identify and evaluate the goals of the law. The second step is to determine whether the law is producing the intended results. The third step is to consider whether the goal can be achieved in a more efficient or a more equitable manner. Concerning the first step, most areas of federal regulatory law can be viewed as responses to perceived defects in the market system—so-called market failures. The correction of market failures provides the organization for Parts 3–6 of this text. This leads to a unique division of topics under which the law is viewed as responding to market failures. In contrast, to other legal environment textbooks which tend to list the chapters on regulatory law in an almost random manner, this textbook represents a policy analysis approach in both substance and organization.

Part 1 includes five chapters that set the foundation for understanding the legal environment of business. The first three are relatively traditional chapters on the court system, the constitution, and administrative law. Chapters 5 and 6 represent significant departures from the traditional legal environment textbook. Although most legal environment textbooks consider the

role of business in society, this is typically done in a chapter at the end of the book or in special segments at the end of chapters. This tends to give students the false impression that such issues are not important. Chapter 5 addresses this area of the legal environment from a policy analysis perspective. Particular areas examined include the political activities of businesses (which could be called "management of the legal environment"), ethics, and social responsibility. Chapter 6 addresses the legal environment of international business—another important area of the legal environment that is typically relegated to the end of the text or is not examined at all.

Part 2 presents a summary of areas of private law that are fundamental to understanding federal regulatory laws—contracts, torts, property, and business associations. Although these chapters are not intended as a substitute for the traditional business law course it is important to expose students to these areas of the law in order to facilitate the study of the other materials in the course and fill in some gaps in their education if they do not happen to take a traditional business law course. It is becoming common to include summary chapters such as those in the legal environment texts.

Part 3 is the first part of the text devoted to governmental responses to an identified market failure—in this case, the failure of the market, under some circumstances, to generate incentives adequate for encouraging businesses to provide relevant and accurate information to their customers. The federal regulatory responses to this market failure in the areas of securities regulation, product safety, worker safety, advertising, and debtor-creditor relations are presented and analyzed.

Part 4 addresses the market failure justification—the presence of externalities—for environmental protection laws. The eco-

nomic justification for governmental intervention and the myriad of federal and state laws are presented and subjected to policy analysis.

Part 5 deals with the federal regulatory response to the market failure associated with monopolies or concentration of economic power. This part continues the tradition evident in most legal environment texts of devoting several chapters to antitrust law. The chapters consider the economics of monopoly and competition, the antitrust laws applicable to monopolies and collusion among competitors, and the antitrust aspects of relations between manufacturers and their wholesalers and retailers.

Finally, Part 6 addresses laws and regulations designed to correct what is perceived by many as the major source of problems with the United States' economic system—unequal distribution of income resulting from unequal bargaining power in labor markets. These chapters present and analyze the basic employment contract, labor-management relations, and equal-employment opportunity laws.

LEARNING AIDS IN THE TEXT

The unique organization and approach of this text is stressed throughout in order to help keep students focused on the big picture. Each part is introduced with a summary of the chapters included in the part so that the logical relationships between the goals of the law and the analytical goals of the text are emphasized.

The policy analysis perspective is evident throughout the text. Questions after cases strike a balance between legal analysis and policy analysis of the opinions. The more in-depth policy analyses are set off in separate subsections. At the conclusion of each chapter, a summary pulls things together. The end of chapter questions are a

mixture of comprehension questions, hypothetical cases, and policy analysis questions. Each chapter contains a bibliography of leading treatises as well as timely scholarly writings.

PEDAGOGICAL AIDS

An Instructor's Manual is available for all adopters of the text. The Manual is an especially helpful teaching tool for instructors not familiar with a policy analysis approach because it includes some additional insights on policy issues. For each chapter, the Manual includes: a chapter outline; a section on author's comments and teaching suggestions; case briefs for each text excerpt as well as answers to end-of-case questions; answers to end of chapter review questions; and an extensive test-bank of true-false, multiple choice, case, and policy questions.

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I welcome comments from students and professors about their experiences with this text.

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